

REMARKS

The foregoing amendment and remarks which follow are responsive to the initial, non-final Office Action mailed May 25, 2004 in relation to the above-identified patent application. In that Office Action, the Examiner indicated that only Claims 1-11 were pending, as opposed to 1-15 as originally submitted. With respect to the substantive examination of such claims, Claims 1-6, 8, 10 and 11 were rejected under 35 USC 102(b) as being anticipated by Brother, et al. (i.e., United States Patent Number 6,485,446). Claims 7 and 9 were rejected under 35 USC 103(a) as being unpatentable over Brother, et al in view of Marion (i.e., United States Patent Number 5,325,537). No other issues were presented.

By this amendment, Applicants have more clearly defined the subject matter which they regard as the invention, as well as have distinguished the present invention over the cited references. In addition, Applicant submits herewith original Claims 12-15, which apparently were not substantively examined. With respect to those claims, Claim 13 is amended herein to likewise more clearly define the subject matter which Applicants regard as the invention.

Specifically, Claim 1, from which the remaining claims depend, has been amended to recite that the protective element has a configuration operative to selectively define **limited** protective barrier **defining a continuous peripheral edge extending below the shoulders** and over the clavicle bones, sternum, and frontal portion of the rib cage of an individual wearing the chest protector device of the present invention.

In this regard, and consistent with the teachings of the present application, the go-kart chest protector device of the present invention is expressly configured to not provide any protective covering over the shoulders of the go-kart driver. See, e.g., Application at page 6, paragraph 21 (garment structure does not provide any type of protective covering about the shoulders of the driver), pp.6-7, paragraph 22 (the protective element is formed to not extend over or otherwise encroach upon the tops of the shoulders of the driver insofar as such structure will interfere with the driver's ability to drive the go-kart); and page 8, paragraph 26 (protective element 22 is selectively sized to extend only across the chest or thorax of the driver).

Neither the Brother, et al. or Marion references, taken either alone or in combination, teach or suggest such limited protective structure. In this regard, the Brother, et al. reference, the primary reference relied upon, is expressly configured to include a protective area that extends over the shoulder of the wearer of such protective apparel. See, e.g., Figure 1. Indeed, the essential purpose of the protective apparel of Brother, et al. is for use with bullet-proof vests or jackets and other ballistic-protective gear and apparel. See, e.g., column 6, lines 15-18; and column 7, lines 33-40. There is no teaching whatsoever to limit the surface area protected by the polymeric material, especially over the shoulders. In fact, to limit such surface area would defeat the primary purpose of the invention disclosed in Brother, et al. by leaving a greater portion of the body exposed to trauma, such as a gunshot wound and the like.

The defects of Brother, et al. are likewise in no way cured by the teachings of Marion et al. In this regard, such reference provides no teaching or suggestion whatsoever to limit the protective surface area provided by such athletic safety jacket disclosed therein, and much less leaving the shoulders of the wearer exposed to enable the wearer to more easily facilitate the driving and handling of a go-kart. See, e.g., Figures 2-3; column 5, line 62 to column 6, line 5; column 6, lines 19-20.

As is well-known, a prior art reference cannot anticipate in terms of 35 USC § 102 unless every element of the claimed invention is identically shown in a single reference. In re Bond, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990). Similarly, obviousness cannot be established based upon a proposed modification of a reference when such modification renders the prior art inoperable for its intended purpose. In re Gordon, 221 USPQ 1125, 1127 (Fed Cir. 1984). As discussed above, the references relied upon do not teach or suggest all of the elements of the claims as amended herein, and likewise, to the extent either the protective apparel of Brother, et al. or the athletic safety jacket of Marion were modified such that the same only provided a limited degree of protection, such modification would destroy their respective intended purposes. Accordingly, there is no teaching or suggestion to one skilled in the art to modify such references to derive the present invention as set forth in the claims as amended herein.

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For the foregoing reasons, Applicants respectfully submit that Claims 1-15, as amended herein, are allowable over the cited prior art. Early notice to that effect is respectfully requested. To the extent the Examiner has any questions, requires additional information, or has any suggestions to resolve any outstanding issues that may exist, the Examiner is invited to contact Applicants' counsel at the number listed below.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

Date: 8/18/04

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